

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SPARACINO PLLC,
1920 L Street, N.W., Suite 535
Washington, D.C. 20036,

Plaintiff,

v.

UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT
1300 Pennsylvania Ave., N.W.
Ronald Reagan Building, Room 2.7C
Washington, D.C. 20523,

Defendant.

Case No.: _____

COMPLAINT FOR VIOLATION OF THE FREEDOM OF INFORMATION ACT

INTRODUCTION

1. Plaintiff Sparacino PLLC represents hundreds of U.S. citizens who were injured (or whose relatives were killed or injured) by terrorist attacks in Iraq, including American military veterans and Gold Star families. Plaintiff brings this action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to compel the United States Agency for International Development (“USAID”) to produce records related to corruption in Iraq. The records sought in this lawsuit will shed light on corrupt payments that helped finance a terrorist group that killed and injured thousands of Americans, including Plaintiff’s clients.

2. Plaintiff properly submitted three targeted requests for relevant USAID records pursuant to FOIA and applicable agency regulations.

3. USAID’s statutory deadline for making a determination concerning each request has expired, but the agency has neither produced any records nor made a determination as to those requests. USAID’s failure to act on Plaintiff’s requests violates FOIA.

4. Plaintiff has constructively exhausted administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and now seeks judicial relief compelling USAID to promptly search for and produce the requested records, and enjoining any further improper withholding.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201(a), and 2202.

6. Venue lies in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

PARTIES

7. Plaintiff Sparacino PLLC is a law firm with an office in Washington, D.C. Plaintiff submitted each of the FOIA requests identified in this Complaint.

8. Defendant United States Agency for International Development is an “agency” of the federal government within the meaning of 5 U.S.C. § 552(f)(1). USAID is believed to have possession, custody, and control of records responsive to Plaintiff’s requests.

FACTUAL ALLEGATIONS

I. Background

9. Plaintiff and its undersigned co-counsel represent more than 1,200 U.S. citizens who were killed or injured, or whose relatives were killed or injured, by the Shiite terrorist group Jaysh al-Mahdi in Iraq between 2005 and 2011. These victims of heinous terrorist attacks have asserted claims in this District against large medical-supply companies that helped finance Jaysh al-Mahdi’s terrorist acts by, among other things, making corrupt payments to obtain contracts from the Jaysh al-Mahdi-controlled Ministry of Health (“Ministry”). *See* Second Am. Compl., *Atchley v. AstraZeneca UK Ltd.*, No. 17-cv-02136-RJL (D.D.C. Feb. 4, 2019), ECF No. 106.

10. USAID possesses records relevant to the claims of Plaintiff’s clients. Specifically, USAID engaged in several development projects to help rebuild Iraq’s institutions after the collapse of Saddam Hussein’s regime, and it was in a position to observe and document the way that pervasive corruption – including at the Ministry – hindered reconstruction efforts and helped finance the terrorist insurgency. Given those projects, and given its stated role in post-war reconstruction in Iraq, USAID generated and maintained records that illuminate the problems posed by public corruption in Iraq. Such records are relevant to Plaintiff’s clients’ claims and should be produced.

11. The requested records also have broader public significance beyond the *Atchley* litigation. National media has reported on the *Atchley* plaintiffs – many of whom are Gold Star families and wounded military veterans, and all of whom made great sacrifices for our country – reflecting the public’s interest in terrorist financing in Iraq.¹ Further reflecting the public importance of records related to these allegations, the Department of Justice (the “DOJ”) is reportedly investigating the corrupt dealings alleged by the *Atchley* plaintiffs,² as several *Atchley* defendants have publicly acknowledged.³ Production of the requested records would thus not only serve the interests of Plaintiff’s clients; it would benefit the public interest.

II. Plaintiff Submitted Three FOIA Requests For USAID Records

12. Between October 2018 and September 2019, Plaintiff properly submitted three separate FOIA requests for USAID records via electronic mail. As discussed more fully below, the requests reasonably describe the requested records and provide all information required by

¹ See, e.g., Gardiner Harris, *Lawsuit Claims Three U.S. Companies Funded Terror in Iraq*, N.Y. Times (Oct. 17, 2017); Kyle Swenson, *Lawsuit: Big Pharma Funded Terrorism in Iraq with Payments to Corrupt Health Ministry*, Wash. Post (Oct. 19, 2017).

² See, e.g., Gardiner Harris, *Justice Dept. Investigating Claims that Drug Companies Funded Terrorism in Iraq*, N.Y. Times (July 31, 2018).

³ Three of the five named corporate-family defendants, AstraZeneca, Johnson & Johnson, and Pfizer, disclosed the DOJ investigation in their Securities and Exchange Commission filings. See AstraZeneca PLC, Report of Foreign Issuer (Form 6-K) at 58 (July 26, 2018) (stating that it “received an inquiry from the US Department of Justice in connection with an anti-corruption investigation relating to activities in Iraq, including interactions with the Iraqi government and certain of the same matters alleged in the [*Atchley*] Lawsuit”); Johnson & Johnson, Quarterly Report (Form 10-Q) at 40-41 (Aug. 2, 2018) (“Also, the company has received an inquiry from the United States Department of Justice regarding the matters set out in the [*Atchley*] complaint.”); Pfizer Inc., Quarterly Report (Form 10-Q) at 44 (Aug. 9, 2018) (stating that, “[i]n July 2018, the U.S. Department of Justice requested documents related to [the *Atchley*] matter, which we will be providing”; and noting “government investigations related to contracts with the Iraqi Ministry of Health”). Another defendant, Roche, confirmed to the press that it “received an inquiry from and is cooperating with the Department of Justice on this matter.” Angus Liu, *Roche, Johnson & Johnson Pulled into Justice Department Probe of Alleged Terrorist Bribes*, FiercePharma (Aug. 2, 2018), <https://www.fiercepharma.com/pharma/roche-johnson-johnson-also-under-justice-department-probe-alleged-terrorist-bribes>.

USAID regulations to perfect the requests. *See* 22 C.F.R. § 212.5. Those requests are summarized below, with supporting documentation attached as appropriate.

13. *Request F-00015-19.* This request seeks five specific appendices, cited by name, attached to a USAID report that was entitled *Pharmaceutical and Medical Products in Iraq* and funded by USAID Contract No. 267-C-00-04-00435-00. In June 2018, USAID produced that report to Plaintiff (in response to FOIA Request F-00056-18, which Plaintiff submitted in December 2017) but omitted the appendices from its production without explanation. When Plaintiff contacted USAID about this omission, USAID instructed Plaintiff to submit a new FOIA request seeking the appendices, explaining that a new request would be the fastest way to obtain them. In reliance on the agency's instruction, Plaintiff submitted Request F-00015-19 seeking the appendices on October 30, 2018. The request is attached here as Exhibit A.

14. The next day, on October 31, 2018, a USAID FOIA specialist confirmed that the request had been perfected; that a tracking number had been assigned; and that a named agency FOIA specialist had been assigned. Despite contacting the agency in the interim, Plaintiff received no further communications from USAID for the next six-and-a-half months. That prompted Plaintiff to file an administrative appeal on May 14, 2019 explaining the history of Request F-00015-19 and detailing why USAID's failure to respond violated its statutory duties under FOIA. On July 10, 2019, USAID sent Plaintiff a letter refusing to consider the appeal because USAID had failed to make an "adverse determination" on Plaintiff's long-outstanding request. The same letter estimated a "completion date for a final response" of July 19, 2019. At the same time, because USAID's statutory deadline had long since expired, the agency's letter

confirmed that Plaintiff was “entitled to seek judicial review.”⁴ Plaintiff’s appeal and the agency’s response are attached here as Exhibits B and C, respectively.

15. USAID did not meet its estimated response date of July 19, 2019 and made no effort to explain why. In the ensuing months, Plaintiff made several efforts to follow up with the agency to inquire on the status of its response. The agency informally acknowledged that the appendices existed but implied that it was having difficulty locating them. Plaintiff suggested that the agency ask individuals involved with drafting the underlying report, and the agency’s FOIA representative indicated that the agency would verify whether that had been done as part of the ongoing search and report back to Plaintiff. The agency never followed up, however, and it has never sent Plaintiff a formal determination on this request. Neither has it offered an adequate explanation for why it has not yet found the appendices to a report that it solicited and maintains (and already produced to Plaintiff), nor offered Plaintiff an opportunity to appeal.

16. *Request F-00172-19.* This request seeks records relating to a January 2, 2006 USAID paper assessing the political and security environment in Iraq, which was reportedly part of a solicitation for contractors to bid on the agency’s “Focused Stabilisation in Strategic Cities Initiative.” According to press reports, the January 2 paper offered the agency’s assessment of several relevant topics, including public corruption and the hijacking of public institutions by criminal terrorist groups like Jaysh al-Mahdi. To facilitate USAID’s search, Plaintiff’s request

⁴ The letter refusing to consider Plaintiff’s appeal also stated that the letter “constitutes USAID’s final decision in this matter.” That communicated to Plaintiff that USAID had finally declined to entertain the appeal, but it did not constitute a determination on whether documents had been found following a reasonable search or that documents would or would not be produced. This letter was therefore consistent with USAID’s statement that it had made no “adverse determination” on Plaintiff’s request, in violation of FOIA’s statutory deadline.

cites and attaches several public sources discussing this paper (and the related solicitation) and describes the requested records with specificity. The request is attached here as Exhibit D.

17. Plaintiff submitted this request on June 11, 2019. On June 13, 2019, USAID confirmed that the request had been perfected; that a tracking number had been assigned; and that a named agency FOIA specialist had been assigned. Since then, USAID has made no further communication to Plaintiff about Request F-00172-19. It has neither produced any records nor conveyed a determination on any part of Plaintiff's request.

18. *Request F-00238-19*. This request seeks all records concerning corruption – including bribes, kickbacks, and other types of illegal payments – touching the Ministry or its import arm, Kimadia. The request specifies a timeframe, identifies one specific USAID custodian particularly likely to have generated or maintained responsive records, and offers to discuss search terms with the agency to facilitate its search. The request is attached here as Exhibit E.

19. Plaintiff submitted this request on September 11, 2019. On September 13, 2019, USAID confirmed that the request had been perfected; that a tracking number had been assigned; and that a named agency FOIA specialist had been assigned. Since then, USAID has made no further communication to Plaintiff about Request F-00238-19. It has neither produced any records nor conveyed a determination on any part of Plaintiff's request.

20. Consistent with the detailed nature of Plaintiff's three requests, USAID has never asserted that any of the requests failed reasonably to describe the records sought or was improper or deficient in any manner. To the contrary, within two days of receiving the requests, USAID confirmed that each request was perfected and conveyed its understanding of the records sought. USAID never sought any additional information, despite Plaintiff's express willingness to

facilitate the agency's search for responsive records. Instead, USAID has failed to respond substantively to any of Plaintiff's requests.

III. USAID Failed to Make Determinations Within FOIA's Time Limits, and Plaintiff Has Constructively Exhausted Administrative Remedies

21. Between October 2018 and September 2019, each request was properly submitted with the required information. USAID quickly assigned tracking numbers to each request and, within two days of submission, acknowledged receipt of all three requests and confirmed that they had been perfected. Under the ordinary operation of FOIA's statutory "20-day period to respond," 22 C.F.R. § 212.8(c), USAID's deadline to make a determination was, at latest, October 11, 2019 for Request F-00238-19 (and much earlier for Requests F-00015-19 and F-00172-19). *See* 5 U.S.C. § 552(a)(6)(A)(i) (requiring a determination within 20 working days of receipt of a FOIA request).⁵

22. The tracking numbers and relevant dates for Plaintiff's three requests are set forth in the table below:

Tracking Number	Request Submission Date	USAID Acknowledgment Date	Statutory Deadline Under FOIA
F-00015-19	10/30/2018	10/31/2018	11/30/2018
F-00172-19	6/11/2019	6/13/2019	7/12/2019
F-00238-19	9/11/2019	9/13/2019	10/11/2019

23. None of USAID's acknowledgment emails requested an extension or invoked any "unusual circumstances" warranting additional time to respond to Plaintiff's three requests. *See* 22 C.F.R. § 212.8(c). Nor do such circumstances exist; as USAID confirmed, Plaintiff's

⁵ The above deadlines conservatively assume USAID did not receive the requests until the acknowledgment dates indicated above, when the agency sent emails expressly "acknowledg[ing] receipt." USAID actually received each request earlier, on the day each request was submitted, as confirmed by the fact that each request was assigned a tracking number the day of submission.

requests reasonably describe the records Plaintiff seeks and trigger the ordinary 20-day deadline. The agency has not requested that Plaintiff modify or narrow any request nor offered Plaintiff an opportunity to do so. *See* 22 C.F.R. § 212.8(c); 5 U.S.C. § 552(a)(6)(B)(ii), (C)(iii).

24. As of the date of this Complaint, USAID has neither produced any records in response to nor made any determination on any of Plaintiff's pending requests. Its statutory deadline has expired for all three requests. USAID's failure to comply with FOIA's deadline for making a determination constructively exhausts Plaintiff's administrative remedies and authorizes Plaintiff to bring suit in this District to compel prompt production and to enjoin continued wrongful withholding of records responsive to Plaintiff's requests. *See* 5 U.S.C. § 552(a)(6)(C)(i).

CLAIMS FOR RELIEF

Count I: Failure to Comply with FOIA

25. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

26. Plaintiff properly made three requests for records within the possession, custody, and control of USAID.

27. USAID is an agency subject to FOIA.

28. USAID is required under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to Plaintiff's FOIA requests.

29. The time limit under 5 U.S.C. § 552(a)(6) and 22 C.F.R. § 212.8(c) for USAID to conduct such a search and to make a determination as to each of Plaintiff's three FOIA requests has expired.

30. USAID has wrongfully failed to communicate to Plaintiff a determination as to each of Plaintiff's three FOIA requests.

31. Pursuant to 5 U.S.C. § 552(a)(3)(A), USAID was required to produce promptly all responsive records that are subject to disclosure under FOIA.

32. USAID has wrongfully failed to make such a production for any of Plaintiff's three FOIA requests.

33. Plaintiff has exhausted administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

34. The Court should therefore order USAID to promptly produce all responsive records, subject to withholdings agreed to by the parties or approved by the Court.

35. To facilitate determination of the validity of any withholdings based on FOIA exemptions USAID might ultimately assert, Plaintiff seeks an order compelling USAID to produce indexes justifying any redactions to or withholding of responsive records.

Count II: Declaration Precluding Assessment of Fees

36. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

37. USAID has failed to comply with time limits under 5 U.S.C. § 552(a)(6).

38. USAID has not discussed or attempted to discuss with Plaintiff how or whether Plaintiff could limit the scope of any of Plaintiff's three FOIA requests.

39. USAID has not invoked exceptional circumstances with respect to Plaintiff's three FOIA requests, and no court has determined that exceptional circumstances exist.

40. Accordingly, Plaintiff is entitled to a declaration that the agency may not assess any search fees associated with any of Plaintiff's three FOIA requests, pursuant to 5 U.S.C. § 552(a)(4)(A)(viii).

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court:

- a. Order USAID to promptly conduct a reasonable search for all records responsive to Plaintiff's three FOIA requests, to the extent such a search has not already been conducted, and to demonstrate that it employed search methods reasonably likely to lead to the discovery of responsive records;
- b. Order USAID to produce within 20 days or such other time as the Court deems proper all records responsive to Plaintiff's three FOIA requests that are subject to disclosure under FOIA, as agreed to by the parties or determined by the Court, and indexes justifying any withholdings or redactions;
- c. Declare that USAID failed to comply with the time limits under 5 U.S.C. § 552(a)(6) and that search fees therefore may not be assessed under 5 U.S.C. § 552(a)(4)(A)(viii) with respect to any of Plaintiff's three FOIA requests;
- d. Award Plaintiff attorney's fees and costs incurred in relation to this case, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- e. Grant Plaintiff any other relief the Court deems just and proper.

Dated: October 14, 2019

Respectfully submitted,

Ryan R. Sparacino (D.C. Bar No. 493700)
SPARACINO PLLC
1920 L Street, N.W., Suite 535
Washington, D.C. 20036
Tel: (202) 629-3530
ryan.sparacino@sparacinopllc.com

/s/ Joshua D. Branson
Joshua D. Branson (D.C. Bar No. 981623)
Andrew E. Goldsmith (D.C. Bar No. 1007074)
Matthew M. Duffy (D.C. Bar No. 1031257)
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Tel: (202) 326-7900
Fax: (202) 326-7999
jbranson@kellogghansen.com
agoldsmith@kellogghansen.com
mduffy@kellogghansen.com

Counsel for Plaintiff